

By: Ellis

S.B. No. 1605

A BILL TO BE ENTITLED

AN ACT

relating to a revenue bond program for, and to the operation of, the Fair Plan Association.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.49A-1 to read as follows:

Art. 21.49A-1. REVENUE BOND PROGRAM FOR FAIR PLAN ASSOCIATION

Sec. 1. PURPOSE. The legislature finds that the issuance of public securities to provide a method to raise funds to provide residential property insurance through the FAIR Plan Association in this state is for the benefit of the public and in furtherance of a public purpose.

Sec. 2. DEFINITIONS. In this article:

(1) "Association" means the FAIR Plan Association established under Article 21.49A of this code.

(2) "Public security resolution" means the resolution or order authorizing public securities to be issued under this article.

(3) "Bond" means any debt instrument or public security issued by the Texas Public Finance Authority.

(4) "Board" means the board of directors of the Texas Public Finance Authority.

(5) "Insurer" means any insurer required to

1 participate in the association under Section 5, Article 21.49A, of  
2 this code, including a Lloyd's plan or a reciprocal or  
3 interinsurance exchange.

4 Sec. 3. PUBLIC SECURITIES AUTHORIZED; APPLICATION OF TEXAS  
5 PUBLIC FINANCE AUTHORITY ACT. (a) At the request of the  
6 association, the Texas Public Finance Authority shall issue public  
7 securities to:

8 (1) fund the association, including:  
9 (A) to establish and maintain reserves to pay  
10 claims;

11 (B) to pay operating expenses; and

12 (C) to purchase reinsurance;

13 (2) pay costs related to issuance of the public  
14 securities; and

15 (3) pay other costs related to the public securities  
16 as may be determined by the board.

17 (b) To the extent not inconsistent with this article,  
18 Chapter 1232, Government Code, applies to public securities issued  
19 under this article. In the event of a conflict, this article  
20 controls.

21 Sec. 4. APPLICABILITY OF OTHER STATUTES. The following  
22 laws apply to public securities issued under this article to the  
23 extent consistent with this article:

24 (1) Chapters 1201, 1202, 1204, 1205, 1231, and 1371,  
25 Government Code; and

26 (2) Subchapter A, Chapter 1206, Government Code.

27 Sec. 5. LIMITS. The Texas Public Finance Authority may

1 issue, on behalf of the association, public securities in a total  
2 amount not to exceed \$75 million.

3 Sec. 6. CONDITIONS. (a) Public securities issued under  
4 this article may be issued at public or private sale.

5 (b) Public securities may mature not more than 10 years  
6 after the date issued.

7 (c) Public securities must be issued in the name of the  
8 association.

9 Sec. 7. ADDITIONAL COVENANTS. In a public security  
10 resolution, the board may make additional covenants with respect to  
11 the public securities and the designated income and receipts of the  
12 association pledged to their payment, and may provide for the flow  
13 of funds and the establishment, maintenance, and investment of  
14 funds and accounts with respect to the public securities.

15 Sec. 8. SPECIAL ACCOUNTS. (a) A public security  
16 resolution may establish special accounts, including an interest  
17 and sinking fund account, reserve account, and other accounts.

18 (b) The association shall administer the accounts in  
19 accordance with Article 21.49A of this code.

20 Sec. 9. SECURITY. (a) Public securities are payable only  
21 from the service fee established under Section 10 of this article or  
22 other amounts that the association is authorized to levy, charge,  
23 and collect.

24 (b) Public securities are obligations solely of the  
25 association. Public securities do not create a pledging, giving,  
26 or lending of the faith, credit, or taxing authority of this state.

27 (c) Each public security must include a statement that the

1 state is not obligated to pay any amount on the public security and  
2 that the faith, credit, and taxing authority of this state are not  
3 pledged, given, or lent to those payments.

4 (d) Each public security issued under this article must  
5 state on its face that the public security is payable solely from  
6 the revenues pledged for that purpose and that the public security  
7 does not and may not constitute a legal or moral obligation of the  
8 state.

9 Sec. 10. SERVICE FEE. (a) A service fee may be assessed  
10 against:

11 (1) each insurer; and

12 (2) the association.

13 (b) The service fee shall be set by the commissioner in an  
14 amount sufficient to pay all debt service on the public securities.  
15 The service fee shall be paid by each insurer and the association as  
16 required by the commissioner by rule.

17 (c) The comptroller shall collect the service fee and the  
18 department shall reimburse the comptroller in the manner described  
19 by Article 4.19 of this code.

20 (d) The commissioner, in consultation with the comptroller,  
21 may coordinate payment and collection of the service fee with other  
22 payments made by insurers and collected by the comptroller.

23 (e) As a condition of engaging in the business of insurance  
24 in this state, an insurer agrees that if the company leaves the  
25 property insurance market in this state the insurer remains  
26 obligated to pay, until the public securities are retired, the  
27 insurer's share of the service fee assessed under this section in an

1 amount proportionate to that insurer's share of the property  
2 insurance market, including residential property insurance, in  
3 this state as of the last complete reporting period before the date  
4 on which the insurer ceases to engage in that insurance business in  
5 this state. The proportion assessed against the insurer shall be  
6 based on the insurer's gross premiums for property insurance,  
7 including residential property insurance, for the insurer's last  
8 reporting period.

9 Sec. 11. TAX EXEMPT. The public securities issued under  
10 this article, any interest from those public securities, and all  
11 assets pledged to secure the payment of the public securities are  
12 free from taxation by the state or a political subdivision of this  
13 state.

14 Sec. 12. AUTHORIZED INVESTMENTS. The public securities  
15 issued under this article constitute authorized investments under  
16 Articles 2.10 and 3.33 and Subpart A, Part I, Article 3.39, of this  
17 code.

18 Sec. 13. STATE PLEDGE. The state pledges to and agrees with  
19 the owners of any public securities issued in accordance with this  
20 article that the state will not limit or alter the rights vested in  
21 the association to fulfill the terms of any agreements made with the  
22 owners of the public securities or in any way impair the rights and  
23 remedies of those owners until the public securities, bond premium,  
24 if any, or interest, and all costs and expenses in connection with  
25 any action or proceeding by or on behalf of those owners, are fully  
26 met and discharged. The association may include this pledge and  
27 agreement of the state in any agreement with the owners of the

1 public securities.

2 Sec. 14. ENFORCEMENT BY MANDAMUS. A writ of mandamus and  
3 all other legal and equitable remedies are available to any party at  
4 interest to require the association and any other party to carry out  
5 agreements and to perform functions and duties under this article,  
6 the Texas Constitution, or a public security resolution.

7 SECTION 2. Subsection (e), Section 3, Article 21.49A,  
8 Insurance Code, is amended to read as follows:

9 (e) The plan of operation shall provide:

10 (1) for establishment of a FAIR Plan Association for  
11 the issuing of residential property insurance pursuant to this Act  
12 and the distribution of the losses and the expenses in the writing  
13 of such insurance in this state;

14 (2) that all insurers licensed to write property  
15 insurance and writing residential property insurance shall  
16 participate in the writings, expenses, [~~profits,~~] and losses of the  
17 association, in the proportion that the net direct premiums, of  
18 each participating insurer, written in this state during the  
19 preceding calendar year, bear to the aggregate net direct premium  
20 written in this state by all participating insurers; such  
21 information shall be determined in accordance with the residential  
22 property statistical plan adopted by the commissioner;

23 (3) that a participating insurer is entitled to  
24 receive credit for similar insurance voluntarily written in a  
25 designated underserved area and its participation in the writings  
26 in the association shall be reduced in accordance with the  
27 provisions of the plan of operation;

1           (4) for the immediate binding of eligible risks; for  
2 the use of premium installment payment plans, adequate marketing,  
3 and service facilities; and for the establishment of reasonable  
4 service standards;

5           (5) procedures for efficient, economical, fair, and  
6 nondiscriminatory administration of the FAIR Plan Association;

7           (6) procedures for determining the net level of  
8 participation required for each insurer in the FAIR Plan  
9 Association;

10          (7) for the use of deductibles and other underwriting  
11 devices and for assessment of all members in amounts sufficient to  
12 operate the association; and establish maximum limits of liability  
13 to be placed through the program; and commissions to be paid to the  
14 licensed agents submitting applications;

15          (8) that the association issue policies in its own  
16 name;

17          (9) reasonable underwriting standards for determining  
18 insurability of the risk;

19          (10) procedures for the assumption and ceding of  
20 reinsurance by the association; and

21          (11) any other procedures or operational matters  
22 deemed necessary by the governing committee or the commissioner.

23          SECTION 3. Subsection (d), Section 5, Article 21.49A,  
24 Insurance Code, is amended to read as follows:

25          (d) Each insurer must participate in the writings,  
26 expenses, [~~profits~~] and losses of the association in the  
27 proportion that its net direct premiums written bear to the

1 aggregate net direct premiums written by all insurers.

2 SECTION 4. Section 11, Article 21.49A, Insurance Code, is  
3 amended to read as follows:

4 Sec. 11. ASSESSMENTS AND PREMIUM SURCHARGES. Should a  
5 deficit occur in the association, the association, at the direction  
6 of the commissioner, shall either request the issuance of public  
7 securities as authorized by Article 21.49A-1 of this code or assess  
8 participating insurers in accordance with this section. Each [~~and~~  
9 ~~each~~] insurer may charge a premium surcharge on every property  
10 insurance policy issued by it insuring property in this state, the  
11 effective date of which policy is within the three-year period  
12 commencing 90 days after the date of assessment by the association  
13 under this section. The amount of the surcharge shall be calculated  
14 on the basis of a uniform percentage of the premium on such policies  
15 equal to one-third of the ratio of the amount of an insurer's  
16 assessment to the amount of its direct earned premiums as reported  
17 in its financial statement to the department for the calendar year  
18 immediately preceding the year in which the assessment is made,  
19 such that over the period of three years the aggregate of all such  
20 surcharges by an insurer shall be equal to the amount of the  
21 assessment of such insurer. The minimum surcharges on a policy may  
22 be \$1; all surcharges may be rounded to the nearest dollar.

23 SECTION 5. Article 21.49A, Insurance Code, is amended by  
24 adding Section 15 to read as follows:

25 Sec. 15. RETENTION OF PROFITS. The association shall  
26 retain any profits of the association to be used for the purposes of  
27 the association. The profits of the association may not be

1 distributed to insurers.

2           SECTION 6. The changes in law made by this Act to Article  
3 21.49A, Insurance Code, apply only to the profits earned by the FAIR  
4 Plan Association in accordance with that article on or after the  
5 effective date of this Act.

6           SECTION 7. This Act takes effect immediately if it receives  
7 a vote of two-thirds of all the members elected to each house, as  
8 provided by Section 39, Article III, Texas Constitution. If this  
9 Act does not receive the vote necessary for immediate effect, this  
10 Act takes effect September 1, 2003.